

APPLICATION FOR COMMUTATION OF SENTENCE

Ronald Bert Smith Jr. humbly asks that you, Governor Bentley, exercise your constitutional authority to commute Mr. Smith's death sentence to life imprisonment without the possibility of parole. Crucially, life imprisonment was the punishment chosen by the jury at Mr. Smith's trial. The trial judge's decision to override the jury's verdict and instead impose a sentence of death is a procedure which has aroused the misgivings of many, including the United States Supreme Court. As Governor, you are empowered to correct what would otherwise be a historic injustice.

I. The override of the jury's life recommendation is fundamentally unfair.

In February 1995, Mr. Smith was charged with one count of capital murder during a robbery. Mr. Smith's trial began July 31, 1995.

Trial and Verdict

Evidence established that the victim, Casey Wilson, was shot and killed while working at the Circle C convenience store in Huntsville on November 8, 1994. Mr. Smith, then a 23-year-old Army reservist, confessed the crime to friends a short time later.¹ After two of Mr. Smith's friends reported his confession to the police, they were provided recording devices. During a subsequent recorded conversation in the early morning hours of December 2,²

¹ R. 826.

² R. 833.

Mr. Smith admitted shooting Mr. Wilson, expressing remorse upon learning the victim had a child:

RONALD BERT SMITH, JR.: When I found out about it -- you know, his child -- I felt bad as shit, too.

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The recording also disclosed Mr. Smith's dependence on alcohol. Before he could even begin the conversation with his friend, Mr. Smith needed a drink:

MS. FERGUSON: Hurry up, Ron, because I have to talk to you.

RONALD BERT SMITH, JR.: Give me that bottle of Tanqueray.

MS. FERGUSON: That bottle of Tanqueray.

RONALD BERT SMITH, JR.: Okay, go ahead.

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Mr. Smith was arrested on December 6, 1994, and immediately confessed his crime to law enforcement. At trial, Mr. Smith testified that he had been drinking with friends prior to the crime.⁵ He also testified that he had begun

³ R. 849.

⁴ R. 838.

⁵ R. 1245.

drinking excessively in college, and his parents had encouraged him to seek treatment.⁶

Other witnesses described a disturbing pattern of behavior in the weeks leading to Mr. Smith's arrest. Ursula Stehle, a former hostess at Fantasia nightclub, testified that Mr. Smith was "extremely intoxicated" at the establishment one evening in early October.⁷ He began yelling at Ms. Stehle, whom he had been seeing romantically,⁸ because he was jealous about her going to breakfast with another man.⁹ David Seagroves, the manager of Fantasia, recalled seeing Mr. Smith intoxicated several times, often to the point that he was refused entry into the club.¹⁰

Mr. Smith's jury comprised a cross-section of the Huntsville community: six women and six men, including a homemaker, two engineers, a project lead at Boeing, a fire inspector, and an anesthesia technician. After several days of testimony, Mr. Smith was found guilty of murder on August 5, 1995. Later that day, after fully considering the evidence presented at trial and sentencing, the jury determined that life imprisonment was the appropriate punishment, by a vote of 7 to 5.¹¹

⁶ R. 1219-20.

⁷ R. 1037.

⁸ R. 1172.

⁹ R. 1037.

¹⁰ R. 1173.

¹¹ See Exhibit 1.

Override

Two months later, on October 6, 1995, the trial judge sentenced Mr. Smith to death. The pronouncement of the death sentence was exceedingly brief, comprising just two transcribed pages.¹² In his remarks, the judge implied that *any* murder would warrant a death sentence: “Certain crimes are so grievous and an affront to humanity that the only adequate response is the penalty of death, and this is such a crime.”¹³ Such an “automatic death” position would have precluded a prospective juror from jury service.¹⁴

Moreover, the notion that Mr. Smith’s offense was especially heinous as compared to other murders was belied by the evidence presented at sentencing. Harry Renfroe, a 26-year veteran of the Huntsville Police Department, testified that he had personally investigated several more egregious homicides, including a woman dragged behind a car on a gravel road, a mother whose throat was slit at the behest of her own son, and a doctor beaten to death with a baseball bat.¹⁵ In the latter two cases, the killers received life in prison.¹⁶

¹² R. 1741-42.

¹³ R. 1742. This statement is an altered quote from *Gregg v. Georgia*, affirming the critical role of juries in capital sentencing: “Indeed, the decision that capital punishment may be the appropriate sanction in *extreme* cases is an expression of the *community*’s belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response *may be* the penalty of death.” 428 U.S. 153, 184 (1976) (emphasis added).

¹⁴ See *Morgan v. Illinois*, 504 U.S. 719 (1992) (holding that a capital defendant may challenge for cause any prospective juror who would automatically vote to impose death if the defendant were convicted of capital murder).

¹⁵ R. 1684-86.

¹⁶ See *Gordon v. State*, 587 So. 2d 427, 428 (Ala. Crim. App. 1990) (“Charles Wayne Gordon . . . was sentenced to life without parole on the murder conviction and to 20 years’ imprisonment on the assault conviction. The state’s evidence tended to show that on April 22, 1988, the appellant’s mother, Mary E. Gordon, was stabbed to death by a friend of the appellant. Upon

The trial judge's disregard for the jury's life verdict is damaging not only to Mr. Smith, but also to those who served on the jury. The psychic toll of jury service, particularly in cases of violent crime, has been widely recognized. "A number of researchers have reported that jurors feel stress at every stage of jury duty."¹⁷ "[E]ven the average experience of being a juror can produce negative health symptoms, and [] being a juror on a traumatic trial produces significantly more negative health symptoms than serving on a non-traumatic trial."¹⁸

In addition to finding guilt or innocence, Mr. Smith's jury was tasked with determining the appropriate punishment: life or death. "The reactions of jurors who decide difficult issues in murder trials resemble certain clinical signs of posttraumatic stress disorder."¹⁹ "This stress results in a variety of physical and emotional symptoms, such as sleeplessness, nervousness, depression, or experiencing intrusive thoughts."²⁰

Capital trials place a tremendous psychological burden on those serving as jurors. "The judicial system should be sensitive to this fact and should

her returning home on April 22, David Eickholt was waiting for her with a knife."); *Incarceration Details for David Eickholt*, available at <http://www.doc.state.al.us/InmateHistory.aspx>; *New Development in Jack Wilson Murder Case?*, WAFF-48, available at <http://www.waff.com/story/1718861/new-development-in-jack-wilson-murder-case?clienttype=printable> ("White [Dr. Wilson's handyman] and Wilson [Dr. Wilson's wife] are serving life sentences.").

¹⁷ Monica K. Miller, et al., *Juror Stress: Causes and Interventions*, 30 T. Marshall L. Rev. 237, 239 (2004).

¹⁸ J. Chris Nordgren, et al., *Helping Jurors Manage Stress: A Multilevel Approach*, 82 Judicature 256, 258 (1999).

¹⁹ James E. Kelley, *Addressing Juror Stress: A Trial Judge's Perspective*, 43 Drake L. Rev. 97, 103 (1994).

²⁰ Miller, *supra* note 16, at 240.

respond appropriately.”²¹ However, by overriding the jury’s life verdict, the trial judge compounded, rather than alleviated, the stress placed on the jury.

Vera Allen served as a juror in this case.²² She has lived in Huntsville all of her life, growing up on a farm in what is now part of the city. Vera and her husband worked, raised their family, and retired in Huntsville. In reaching the decision that life imprisonment was the appropriate punishment for Mr. Smith, she considered a number of factors, including the values Mr. Smith’s parents tried to instill in him and his adopted siblings; Mr. Smith’s prior good behavior, including his kindly assistance to an elderly neighbor; the fact that Mr. Smith’s dependence on alcohol directly contributed to his participation in this crime; and the reality that the loss of all freedom for the remainder of his life is a painful penalty, both for Mr. Smith and his family.

Vera and the other jurors reached their life verdict after careful and deliberate consideration. She was dismayed to learn that their decision was rejected, with the trial judge unilaterally imposing a sentence of death. As Vera recalls, she did not know that could happen — until it did.

The implications of the trial judge’s disregard for the jury’s verdict extend beyond this case. “When juror stress is not addressed, society as a whole is harmed, by diminishing people’s confidence and trust in the court system.”²³

²¹ Kelley, *supra* note 18, at 124.

²² See Exhibit 1, Affidavit of Vera Allen.

²³ Miller, *supra* note 16, at 244.

“Stressed jurors are less likely to want to be on another jury.”²⁴ After the pain caused by the override of the jury’s life verdict, Vera Allen never again wants to serve as a juror in a murder trial.²⁵

As the Supreme Court has recognized, juries in death penalty cases act as the “conscience of the community.”²⁶ “Jurors may benefit from jury service through a sense of empowerment by participating in the decision-making process.”²⁷ Sadly, the override of Mr. Smith’s jury silenced and disempowered them.

Historical Analysis

More than 20 years ago, the Alabama Law Review recognized that jury override is a “standardless procedure.”²⁸ “The jury override gives trial judges in capital cases the awesome power to impose death even when the jury has concluded that life imprisonment is the proper sentence.”²⁹ “Even if the jury avoided mistakes and reached a fair outcome, the judge is able to override because he disagrees with their decision.”³⁰

²⁴ Kelley, *supra* note 18, at 102.

²⁵ See Exhibit 1, ¶ 7.

²⁶ *Witherspoon v. Illinois*, 391 U.S. 510, 519 (1962).

²⁷ Daniel W. Shuman, *The Health Effects of Jury Service*, 18 Law & Psychol. Rev. 267, 268 (1994).

²⁸ Katheryn K. Russell, *The Constitutionality of Jury Override in Alabama Death Penalty Cases*, 46 Ala. L. Rev. 5, 42 (1994).

²⁹ Scott E. Erlich, *The Jury Override: A Blend of Politics and Death*, 45 Am. U. L. Rev. 1403, 1405 (1996).

³⁰ Shannon Heery, *If it’s Constitutional, Then What’s the Problem: The Use of Judicial Override in Alabama Death Sentencing*, 34 Wash U. J. L. & Pol’y 347, 390 (2010).

Following the Supreme Court’s decision in *Gregg v. Georgia*,³¹ upholding capital punishment where there are adequate safeguards against the imposition of arbitrary death sentences, Alabama’s current capital sentencing statute was enacted in 1981. Alabama now leads the nation in death sentences,³² and jury override is a major factor. Since 1976, nearly one-fifth of people executed in this state “were sentenced to death by judges even though their juries determined that death was not an appropriate punishment.”³³

Contrary to the Supreme Court’s prescriptions for capital cases, jury override is frequently imposed arbitrarily. Alabama “remains the only state in the country where judges can override jury life verdicts without meeting a strict standard.”³⁴ “[T]he absence of a standard increases the probability of disparity within judges’ decisions to use the override.”³⁵ The likelihood of override depends on numerous arbitrary factors, including timing (overrides are more common in an election year),³⁶ geography (three counties account for nearly half of all

³¹ 428 U.S. 153 (1976).

³² See Brendan Kirby, *Death Penalty Capital: Alabama Has Nation’s Most Death Row Inmates Per Capita*, AL.com (May 1, 2015, 6:00 AM), http://www.al.com/news/index.ssf/2015/05/death_penalty_capital_alabama.html (“Alabama has the nation’s biggest death row as a percentage of the state’s population. And No. 2 is not even close.”); Heery, *supra* note 29, at 379 (“In 2008, more people were sentenced to death in Alabama than in Georgia, Tennessee, Virginia, South Carolina, Kentucky, and Mississippi combined.”).

³³ *The Death Penalty in Alabama: Judge Override*, Equal Justice Initiative, 23 (July 2011), <http://eji.org/sites/default/files/death-penalty-in-alabama-judge-override.pdf>.

³⁴ *Id.* at 13.

³⁵ Russell, *supra* note 27, at 34.

³⁶ *The Death Penalty in Alabama*, *supra* note 32, at 5 (“In 2008, 30% of new death sentences were imposed by judge override, compared to 7% in 1997, a non-election year.”).

overrides),³⁷ race (more than half of override death sentences were imposed on black defendants),³⁸ and the personal disposition of the sentencing judge (several judges, including the judge in this case, have imposed multiple overrides).³⁹

Override has proven both harsh and unreliable. The youngest defendant sentenced to death by override was just 15 years old.⁴⁰ An innocent man, Walter McMillan, was exonerated several years after his trial judge overrode the jury's life verdict and sentenced him to death.⁴¹ In the majority of override cases, trial judges failed to even consider the jury's life verdict as a mitigating circumstance.⁴² Jury override "more closely resembles a lottery than a constitutional capital sentencing procedure."⁴³

Recent Developments

In January of this year, the Supreme Court invalidated Florida's capital sentencing scheme in *Hurst v. Florida*.⁴⁴ The Court held that "[t]he Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a

³⁷ *Id.* at 17.

³⁸ *Id.* at 18.

³⁹ *Id.* at 25; see also Russell, *supra* note 27, at 34 ("[E]ven if each capital judge has his own override standard, use of the override would still be arbitrary since its use in a particular case would depend upon which judge is assigned the case.").

⁴⁰ *The Death Penalty in Alabama*, *supra* note 32, at 19.

⁴¹ *Id.* at 22.

⁴² *Id.* at 19.

⁴³ Russell, *supra* note 27, at 43.

⁴⁴ 136 S. Ct. 616 (2016).

sentence of death. A jury's mere recommendation is not enough."⁴⁵ Accordingly, relegating a capital jury to an advisory role, as happened in Mr. Smith's case, is unconstitutional.

Like Florida, Alabama employs a "hybrid" procedure in which the jury renders an advisory verdict, with the judge responsible for the ultimate sentencing decision. Like Florida, the trial judge may sentence a defendant to death based on his own fact-finding, notwithstanding the life recommendation from the jury.

Contrary to *Hurst*, the trial judge in this case made his own factual findings, and ignored the jury's findings. The trial judge rejected Mr. Smith's young age and alcohol dependence as mitigating circumstances,⁴⁶ though these factors clearly influenced the jury's life verdict.⁴⁷ The trial judge single-handedly found that Mr. Smith's offense was especially heinous as compared to other capital offenses,⁴⁸ despite the testimony of the lead detective, who admitted investigating several more egregious homicides,⁴⁹ for which defendants received life in prison.

In explaining the override, the trial judge's sentencing order offers a dubious rationale:

⁴⁵ *Id.* at 619.

⁴⁶ C. 243, 245.

⁴⁷ See Exhibit 1, Affidavit of Vera Allen.

⁴⁸ C. 240.

⁴⁹ R. 1684-86.

Smith's background exposed him to virtually all of the values that are central to an ordered society; the awards of his youth opened avenues that pointed to a successful career based upon honest effort. But, Smith spurned society's road signs and took the way that led him to where he is today. He chose to wallow in the gutter; he was not born into it.⁵⁰

In direct contravention of the jury, who regarded Mr. Smith's background as mitigating,⁵¹ the trial judge punished Mr. Smith more harshly *because of* the values and opportunity his parents had afforded him.

In *Hurst*, the Supreme Court recognized that the fact-finding necessary for imposition of a death sentence is properly the province of the jury. The Court's acknowledgement is consistent with the jury's important role as the "conscience of the community."⁵² The jury "is a significant and reliable objective index of contemporary values[.]"⁵³ Mr. Smith respectfully asks that you restore the punishment that the jury rightly determined was appropriate in this case: life imprisonment without parole.

II. Mr. Smith's federal appeals were never considered because he was failed by his attorneys.

After his trial and direct appeals, Mr. Smith found himself without counsel. "Nearly alone among the States, Alabama does not guarantee representation to indigent capital defendants in postconviction proceedings."⁵⁴ Like most death-

⁵⁰ C. 249.

⁵¹ See Exhibit 1, Affidavit of Vera Allen.

⁵² *Witherspoon*, 391 U.S. at 519.

⁵³ *Gregg*, 428 U.S. at 181.

⁵⁴ *Maples v. Thomas*, 132 S. Ct. 912, 918 (2012).

sentenced inmates in Alabama, Mr. Smith depended on the assistance of volunteer attorneys to file his collateral appeals. Unfortunately, Mr. Smith's attorneys failed him.

Addiction and Abandonment

There is a one-year limitations period for federal habeas review. A state prisoner has one year from the date his judgment became final to file his habeas petition in federal court. However, this one-year period will be placed on hold once a prisoner properly files a collateral appeal in state court.⁵⁵

Mr. Smith's judgment became final on October 2, 2000. In March 2001, Mr. Smith contacted the Equal Justice Initiative in search of an attorney. In July, two months before expiration of the one-year limitations period, EJI notified Mr. Smith that William Massey, a Tennessee attorney, had volunteered to represent him.

Because Mr. Massey was not licensed in Alabama, he required a local attorney to represent Mr. Smith along with him. Mr. Massey was joined by C. Wade Johnson, an attorney in Scottsboro. Unfortunately, Mr. Johnson was then in the grips of a deadly addiction.

Wade Johnson's struggle with drug and alcohol dependency is documented by a lengthy arrest record.⁵⁶ On December 4, 1999, Mr. Johnson was arrested in Jackson County, Alabama, for public intoxication. On August

⁵⁵ 28 U.S.C. § 2244(d)(2).

⁵⁶ See Exhibit 21, C. Wade Johnson's arrest records.

21, 2000, Mr. Johnson pled guilty, was sentenced to five days of confinement (suspended), given two years of probation, and was ordered to pay \$1,500 in restitution. On September 8, 2000, Mr. Johnson was arrested in Jefferson County, Alabama, and charged with possession of a controlled substance and use/possession of drug paraphernalia. The use/possession charge was nolle prosequed on November 30, 2000. After Mr. Johnson completed Drug Court on July 19, 2001, the possession charges were dropped.

At the time Mr. Johnson assumed representation of Mr. Smith, he was still on probation. However, Mr. Smith was never notified of Mr. Johnson's role in his case, nor of Mr. Johnson's addiction and probationary sentence.

Mr. Smith's Rule 32 petition was filed in the Madison County Circuit Court on September 27, 2001. Although the petition included a request for funds, it was not accompanied by a filing fee or a motion to proceed in forma pauperis. As the Rule 32 petition was therefore not *properly* filed, the one-year limitations period for Mr. Smith's federal habeas petition was not tolled.

On October 15, 2001, Jill Whitehead, a legal secretary for Mr. Johnson, wrote a letter to Mr. Massey,⁵⁷ informing him that the Madison County Circuit Clerk had returned the petition to Mr. Johnson's office because it was tendered without a filing fee or a motion to proceed in forma pauperis. Ms. Whitehead also notified Mr. Massey that he needed to file an application for permission to practice in Madison County, by admission pro hac vice.

⁵⁷ See Exhibit 22, Letter from Jill Whitehead to William Massey.

But neither Mr. Johnson nor Mr. Massey took any action at that point. No one told Mr. Smith that no filing fee had been tendered with his petition or that his Tennessee lawyer was not yet authorized to represent him. In February 2002, more than four months after the filing, Mr. Massey finally paid the fee. But this was long after the one-year limitations period had already lapsed.

In the meantime, Wade Johnson's descent into the maelstrom of substance abuse continued. On October 25, 2001, less than a month after Mr. Smith's Rule 32 petition was improperly filed, Mr. Johnson was visiting a client at Fountain Correctional Facility in Atmore, Alabama, when he had a "medical problem."⁵⁸ He was rushed to a local hospital. While Mr. Johnson was being taken away, prison officials discovered that his dog was locked in his car. Out of concern for Mr. Johnson's dog, a prison official entered his car. The prison official found a bag in the car containing illegal narcotics, including prescription drugs and crystal methamphetamine. Mr. Johnson was arrested in Scottsboro and transferred to Escambia County for prosecution. He was charged with nine counts of possession of a controlled substance.

As a result of his ongoing substance abuse problems, the Alabama State Bar transferred Mr. Johnson to disability inactive status on November 20, 2001. On November 26, Patricia Lackey was appointed to act as trustee over Mr. Johnson's cases. Mr. Johnson committed suicide on August 16, 2002.

⁵⁸ Mazie Smith, *Attorney Arrested on Drug Charges*, The Scottsboro Daily Sentinel, attached hereto as Exhibit 20.

By the end of 2001, Mr. Smith had no lawful representation. Mr. Johnson was inactive, and Mr. Massey never took steps to be admitted pro hac vice. Mr. Smith was effectively abandoned when he most needed the advice and assistance of an attorney.

The Loss of Federal Habeas Review

At the conclusion of the Rule 32 proceedings, Mr. Smith filed his federal habeas petition. He challenged the trial judge's override of the jury's life verdict, as well as his co-defendant's false testimony that he would receive life in prison, though the co-defendant was ultimately sentenced to 20 years for the same murder and released early. Mr. Smith's claims were substantial and deserving of review. But the habeas court declined to consider them, citing his volunteer counsel's mishandling of the Rule 32 filing, and the expiration of the time limit for filing the federal habeas petition.

The loss of federal habeas review, due to his attorneys' carelessness, was a crushing blow to Mr. Smith's chances at life. "[F]ederal review of capital sentences, which is the last level of review for most capital defendants, provides an essential forum for ensuring that defendants facing an irrevocable punishment receive the rights guaranteed by the Constitution."⁵⁹

Yet Ronald Smith faces imminent execution. This, despite the fact that his jury chose to impose a life sentence, and despite the fact that his co-defendant was released many years ago, while still in his twenties.

⁵⁹ Aaron G. McCollough, *For Whom the Court Tolls: Equitable Tolling of the AEDPA Statute of Limitations in Capital Cases*, 62 Wash. & Lee L. Rev. 365, 374 (2005).

Mr. Smith's appellate counsel were unlicensed and drug addicted. Their mistakes deprived him of meaningful review of his claims. "Arbitrary results, which are all too common in death penalty cases, frequently stem from inadequacy of counsel. The process of sorting out who is most deserving of society's ultimate punishment does not work when the most fundamental component of the adversary system, competent representation by counsel, is missing."⁶⁰

Capital Representation in Alabama

The series of errors which befell Mr. Smith is not unique. "While the State of Alabama provides appointed counsel for direct appeals from death penalty convictions, it provides no resources or timely legal assistance to death row inmates in state post-conviction proceedings."⁶¹ "In recent years, there has been no shortage of examples of how the underfunding of indigent defense negatively impacts the legal representation that poor criminal defendants receive."⁶²

In *Maples v. Thomas*,⁶³ for instance, the United States Supreme Court considered whether an Alabama death row inmate should be denied federal habeas review, on account of his out-of-state volunteer attorneys' failure to

⁶⁰ Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime But for the Worst Lawyer*, 103 Yale L. J. 1835, 1837 (1994).

⁶¹ William N. Clark, *Respond to Gideon's Trumpet, and Turn Commitment into Action*, 65 Ala. Law. 136, 137 (1004).

⁶² Lauren Sudeall Lucas, *Lawyering to the Lowest Common Denominator: Strickland's Potential for Incorporating Underfunded Norms into Legal Doctrine*, 5 Faulkner L. Rev. 199, 200 (2014).

⁶³ 132 S. Ct. 912 (2012).

preserve his claims in Rule 32 proceedings. The volunteer counsel abandoned the petitioner, leaving their law firm without notifying Mr. Maples, or the court, that they would no longer handle his case.⁶⁴ Given these unfortunate circumstances, the Supreme Court permitted federal habeas review.⁶⁵

While the Supreme Court intervened in *Maples*, no court intervened on behalf of Mr. Smith — despite the obvious comparisons. As in *Maples*, Mr. Smith was abandoned by his attorneys, but not due to a simple change of employment. Mr. Smith’s circumstances are more egregious. His out-of-state counsel failed to even move for admission, and his local attorney was a drug addict, prior to being removed by the Bar.

The attorneys in *Maples* were neglectful, but they were at least competent to represent their client — unlike the attorneys in this case. Nevertheless, Mr. Smith now faces execution without his federal claims ever having been considered.

The fatal errors in these cases stem from inadequate capital representation in Alabama. Poor death row inmates, whose lives depend on legal assistance, are not afforded it. While many of these prisoners are matched with volunteers, “[o]n occasion, some prisoners sentenced to death receive no postconviction representation at all.”⁶⁶ For those who receive a volunteer, the perilous reality is

⁶⁴ *Id.* at 919.

⁶⁵ *Id.* at 927.

⁶⁶ *Maples*, 132 S. Ct. 918.

that they “neither choose nor control” their own attorney.⁶⁷ Many of these volunteers are from outside of Alabama, and are not familiar with Alabama’s rules. “Even if inmates try to assert control over their representation or correct mistakes by their lawyers, many courts, including the Eleventh Circuit, do not accept pro se filings from inmates who are represented by counsel.”⁶⁸

The pitiful state of capital post-conviction representation is contrary to Alabama’s history and values. It was Alabama’s own Justice Hugo Black who authored the Supreme Court’s opinion in *Gideon v. Wainwright*,⁶⁹ guaranteeing the right to counsel in all criminal prosecutions. Justice Black recognized that “lawyers in criminal courts are necessities, not luxuries.”⁷⁰ This adage remains true in the context of Rule 32 proceedings, as state post-conviction becomes increasingly important in death cases. “[S]tate postconviction cases are now the prime vehicle in which the Supreme Court can develop certain areas of federal constitutional law.”⁷¹



Figure 1 Justice Hugo Black

⁶⁷ *Eleventh Circuit Holds That Postconviction Counsel’s Misconduct Does Not Excuse Untimely Petition--Smith v. Commissioner*, 127 Harv. L. Rev. 827, 830 (2013).

⁶⁸ *Id.* at 830-31.

⁶⁹ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁷⁰ *Id.* at 344.

⁷¹ Giovanna Shay, *The New State Postconviction*, 46 Akron L. Rev. 473, 487 (2013).

“Whether state postconviction realizes its potential depends in large part on the resources made available at the state level[.]”⁷² The Alabama State Bar has declared that “[t]here is a critical need for a statewide capital public defender program to provide counsel for persons on appeal and in post-conviction proceedings in capital cases. Such an office would also be a resource for training and assistance to appointed counsel in capital cases.”⁷³ Until these recommendations are implemented, indigent death-row prisoners like Mr. Smith will continue to fall victim to their attorneys’ mistakes.

III. Mr. Smith’s background, and the positive changes he has made in his life while in prison, demonstrate that death is an excessive punishment.

Prior to his arrest in this case, Ronald Smith led a mostly conventional life. But behind closed doors, he was suffering. Today, removed from the damaging influence of alcohol, Mr. Smith has realized his truest potential: a community servant, a faithful Christian, and a loving son and father.

A Promising Start

Mr. Smith’s parents, Mary and Ronald Smith Sr., both hail from Pennsylvania. They first became acquainted while Ron Sr. was serving in the United States Army during the Vietnam War. Mary’s cousin asked her to write to his friend in Vietnam. She wrote to Ron Sr., they became regular pen pals, and a relationship blossomed.

⁷² *Id.* at 488.

⁷³ Clark, *supra* note 63, at 137.

Epistolary communications were integral to sustaining soldiers' morale during the war, and Mary's letters were a blessing to Ron Sr. Even before he was deployed to Vietnam at 22 years old, Ron Sr. had survived many trying times. His father was a cruel and distant man, who frequently lashed out and belittled him. Ron Sr. embraced the United States Army as an opportunity to better himself. In Mary, he found a partner and a friend.

While Mary's jovial personality did not let on, she had experienced her own share of disappointments. As a child, she was routinely beaten with a belt and had her mouth washed out with soap. But Ron Sr. appreciated her letters and encouraged her.

Ron Sr.'s years in Vietnam were very dangerous. He remembers working in bombed out fields and jungles which had been exposed to Agent Orange. Just before his first tour of duty ended, his battalion commander's helicopter was shot down. Ron Sr. recalls that everyone was shocked and frightened. Worse, he had lost a mentor and friend.

On one of Ron Sr.'s visits home, he and Mary became engaged. When he returned to Vietnam, Mary continued to send him gifts and packages. In fact, Mary and his mother were the only people who wrote to him. Ron Sr. left Vietnam for good in 1969, and he and Mary married.

Ron Sr. was soon deployed to Korea. After he found a small apartment, Mary flew out to meet him. By then she was pregnant with their first child. On January 13, 1971, Ronald Smith Jr. was born at Seoul Military Hospital. They called him Ronnie.



Figure 2 Mom, Dad, & Ronnie - 1971

Ronnie was ill at birth, suffering from jaundice, clubbed feet, and other problems. But he was resilient. Mary recalls Ronnie's early childhood as a blissful time in her life. Ronnie grew into a playful and happy kid, who loved to laugh and sing. The family travelled a lot, as Ron Sr. advanced in his military career. In the midst of such happiness, Mary could not have predicted the hard times which were to come.



Figure 3 Ronnie, 6 years old

A Family in Pain

The problems began with the miscarriages. Mary had a difficult pregnancy with Ronnie, suffering from preeclampsia and dysentery prior to his birth. But she did not expect any obstacles to having more children. As the years passed, Mary and Ron Sr. tried without success to have another child, enduring miscarriage after miscarriage.

Mary recalls being devastated and depressed. Lingering feelings of inadequacy and self-doubt from childhood suddenly surfaced. Having always been a solace to each other, Mary and Ron Sr. faced their first inescapable crisis as a couple.

The psychological impact of miscarriage “is profound, because it is so deeply connected to an individual’s sense of identity and self-esteem.”⁷⁴ “There’s the loss not just of the pregnancy, but one’s hopes and dreams for that child into

⁷⁴ Monica N. Starkman, M.D., *It’s Pregnancy Loss Awareness Month: How to Help Others*, Psychology Today (Oct. 14, 2016), <https://www.psychologytoday.com/blog/call/201610/its-pregnancy-loss-awareness-month-how-help-others>.

the future.”⁷⁵ According to the American Psychological Association, “[a] woman who has a miscarriage is at risk for depression and anxiety symptoms in subsequent years”⁷⁶ “Although 1 in 5 pregnancies will result in miscarriage, it can be an isolating experience since talking about it makes many people so uncomfortable.”⁷⁷

Ron Sr. was desperate to see his wife happy again. Together, they sought a domestic adoption from the United States. After many attempts, they were unable to be placed with a child.

By this time, Mary’s brother had adopted a daughter from a Korean agency. After some discussion, Ron Sr. and Mary decided to try the same agency. They were told that a single child could not be placed with their family, but a pair of siblings were available for adoption. In 1978, when Ronnie was 7 years



Figure 4 Ronnie, Cassie, & Bryan with Parents

old, Ron Sr. and Mary adopted these siblings, whom they named Cassie (then age 5) and Bryan (age 3). In 1979, Cassie and Bryan became naturalized as United States citizens.

With their family finally complete, Ron Sr. and Mary were overjoyed. Ronnie was an excellent big brother, very loving and protective

⁷⁵ *Id.*

⁷⁶ Elizabeth Leis-Newman, *Miscarriage and Loss*, American Psychological Association Monitor on Psychology Vol. 43, No. 6 (June 2012), <http://www.apa.org/monitor/2012/06/miscarriage.aspx>.

⁷⁷ Katherine Martinelli, *Miscarriage is Common. So Why is It Such An Isolating Experience?*, Washington Post (Oct. 13, 2016), 2016 WLNR 31350257.

of his new siblings. As Mary recalls, Ronnie behaved like a third proud parent. The family continued to move often, and in 1979, they relocated to Germany, where Ron Sr. was stationed.

Mary was proud to have the family life she always wanted. But she found it difficult to shake the feelings of sadness and anxiety, which had developed as she coped with infertility. Rearing three young children in a foreign country was hard, and in addition to her responsibilities at home, Mary was also a licensed practical nurse.

The stress of caring for her family, coupled with the unresolved pain of multiple pregnancy losses, was too much for Mary to handle. She became harsh and brittle with the children. She would scream and yell at them for minor transgressions. Mary then became violent with the children, especially with Bryan and Cassie. She recalls slapping Bryan and Cassie across the face, even when the family was out in public. Brutal beatings soon followed.

Ronnie witnessed his mother's abusive behavior, and was traumatized by it. He loved Mary very much, but felt an urge to rescue his siblings. Ronnie also felt guilty that Mary's physical aggression was mainly directed at his younger adopted siblings, not towards him. "[W]hether adopting domestically or internationally, parents are often not adequately prepared to understand the



Figure 5 The Smith Family

difficulties of raising an adopted child, how to properly handle these difficulties, or where to turn for help.”⁷⁸

As Mary became increasingly violent with her adopted children, she furthered a pattern of mistreatment which stemmed from her own abusive upbringing. “If there is one attribute that seems to be characteristic of almost all abusive parents, it is that they were maltreated by their own parents when they were children.”⁷⁹ Mary’s abuse would scar her family, including Ronnie, forever.

A Private Shame

After numerous incidents of abuse, Ron Sr. finally intervened to protect the children. He knew that Mary was struggling with the responsibility of caring for three kids. But because of his own troubled childhood, Ron Sr. chose to let Mary manage problems in their household. After seeing how distressed the children had become, he wished that he had stepped in sooner.



Figure 6 The Smith Family

Ron Sr. recommended parenting classes for Mary. Although she tried them, she did not believe that they helped her. Ron Sr. and Mary then began counseling sessions with a psychologist, whom Mary also saw alone. In their joint sessions, Mary told Ron Sr. that each time she lashed

⁷⁸ S. Megan Testerman, *A World Wide Web of Unwanted Children: The Practice, the Problem, and the Solution to Private Re-Homing*, 67 Fla. L. Rev. 2103, 2116 (Nov. 2015).

⁷⁹ Nancy Wright, et al., *SOS (Safeguard Our Survival): Understanding and Alleviating the Lethal Legacy of Survival-Threatening Child Abuse*, 16 Am. U. J. Gender Soc. Pol’y & L. 1, 29 (2007).

out and struck the children, the rage overcame her and she was powerless to stop it. She always felt very regretful afterward. With the help of a professional, Mary was finally able to gain some control over her anger.

Sadly, the damage to the children had already been done. They had learned to put on a public face to hide their private shame. “Abusive families tend to be secretive.”⁸⁰ “Battered children withdraw and suppress their emotions, both in the dangerous environment of the home, and outside the home.”⁸¹

Even as beatings and fights became routine at home, the children attended school and participated in various activities. While in Germany, Ronnie joined the Boy Scouts of America. Ronnie and his siblings also played soccer and other sports.

In 1982, the family relocated to Huntsville, and Ron Sr. began working at



Figure 7 Smith Family Home, Huntsville, AL

Redstone Arsenal. Mary and Ron. Sr. bought a house, and the family joined Trinity United Methodist Church. Ronnie became active in Demolay, an international fraternal organization for young men, and continued with Boy

Scouting. The Smiths were a typical American family, fixtures in their local community. No one would have guessed that anything was amiss.

⁸⁰ Robert Hegadorn, *Clemency: Doing Justice to Incarcerated Battered Children*, 55 J. Mo. B. 70, 71 (1999).

⁸¹ *Id.* (internal citation omitted).



Figure 8 Ronnie and Siblings

Ronnie became an Eagle Scout, the highest rank attainable in Boy Scouting.⁸² He received numerous commendations from local and national



Figure 9 Eagle Scout Ceremony

leaders, including President Ronald Reagan, Senator Howell Heflin, and Senator Jeremiah Denton.⁸³ Huntsville Mayor Joe Davis wrote, "I am sure that you will continue your life in a manner that will make our country stronger because of your personal belief and your willingness to serve to the best of your ability."

⁸² See Exhibit 11, Eagle Scout Certificate.

⁸³ See Exhibit 12, Commendations on Achieving Eagle Scout.

Ronnie's parents and siblings relished his accomplishment. At 15, Ronnie was two years younger than the average age for attaining the Eagle Scout award. Ronnie was proud too. But despite his medals, Ronnie felt a tremendous anxiety.

Refuge in the Bottle

By the time Ronnie graduated from Grissom High School in 1989, he had been drinking alcohol in secret for years. When Ronnie was drinking, he felt free and invincible, like there was nothing to worry about. As a teenager, Ronnie's younger brother, Bryan, also crept out of the house at night to drink and hang out with his friends.

Alcohol dependency is common among children from abusive homes. "Children may turn to alcohol or drugs as a form of self-medication to dull or escape the trauma of the abuse, which may then turn into a long-term substance-abuse problem."⁸⁴ "Because alcohol merely covers, rather than cures, the problem, the need for alcohol may persist or even increase over time, increasing the risk of developing alcohol abuse or dependence."⁸⁵ "The consequences of adolescent substance abuse, if not properly addressed and treated, can be dire."⁸⁶

In 1987, Ron Sr. began a new career at NASA. As a contract officer, he led a team of procurement specialists who purchased technical equipment. Shortly

⁸⁴ Phyllis L. Crocker, *Childhood Abuse and Adult Murder*, 77 N.C. L. Rev. 1143, 1163 (1999).

⁸⁵ Cathy Spatz Widom, Ph. D., et al., *Alcohol Abuse as a Risk Factor for and Consequence of Child Abuse*, Alcohol Research and Health, Vol. 25, No. 1, p. 55 (2001), available at <http://pubs.niaaa.nih.gov/publications/arh25-1/52-57.pdf>.

⁸⁶ Howard Davidson, *When it Happens in a Family: Aiding Parents of Substance-Abusing Adolescents*, 47 Fam. Ct. Rev. 253, 262 (2009).

thereafter, Mary began her studies to become a registered nurse, which she completed in 1992. Given their demanding schedules, Ronnie's parents did not realize he had an alcohol problem until it was too late.

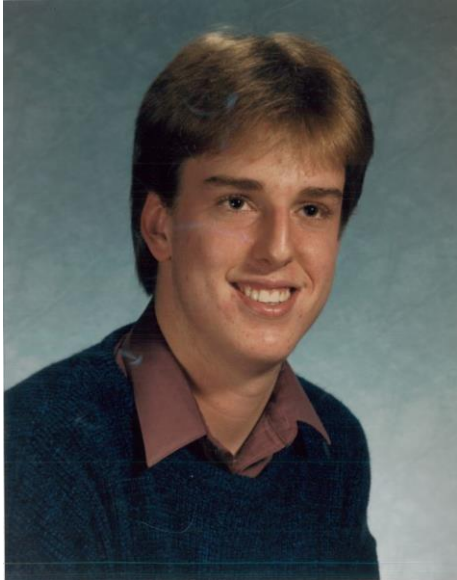


Figure 10 Ronald Smith Jr.

In the fall of 1989, Ronnie moved to Tuscaloosa to attend the University of Alabama. He was excited to make a fresh start in a new place, but his problems with alcohol followed him. Friends from college recall that Ronnie was protective and outgoing, but he routinely drank alcohol to excess.⁸⁷ Ronnie's dependence on alcohol was so severe that he even began donating plasma to raise money for beer. Ronnie would often sit alone and drink more than a pint of vodka straight.

Soon, Ronnie could no longer function as a student due to his excessive drinking. He began missing classes, and failed to complete his assignments. Ronnie and his friends occasionally skipped classes together to party and drink. His college roommate, concerned about Ronnie's destructive behavior, called Ron Sr. and Mary to report his alcohol abuse. Ronnie's parents were horrified, and took him to see an addiction counselor on campus. After one year at the University of Alabama, Ronnie dropped out.

⁸⁷ See Exhibit 19, Affidavits of College Friends.

Ronnie returned to Huntsville to try to get his life back on track. He moved home and enrolled in Calhoun Community College. He resumed mowing an elderly neighbor's lawn for free, as he had in high school. He also joined the Army Reserves, an attempt to bond with his father and make him proud.

In the Reserves, Ronnie joined the 326 Chemical Company. He became a chemical operations specialist.⁸⁸ At Fort Bragg, he learned to operate a smoke generator. Ronnie loved the camaraderie and sense of purpose he enjoyed in the Army. But despite the advances in his career, Ronnie could not overcome his dependence on alcohol.



Figure 11 Army Photo

Danny Wagner, a friend from the Army Reserves, recalls that Ronnie was a very good soldier.⁸⁹ He was always willing to help out, and was a team player. However, Danny noticed that Ronnie had a drinking problem. Sometimes Ronnie would show up to work reeking of alcohol from the night before. At the time, Danny believed that Ronnie's drinking was harmless.

Ron Sr. and Mary became increasingly worried about Ronnie's drinking. His friends from the Reserves often stopped by the house to drink with Ronnie before heading out to a nearby nightclub. One night, a policeman called to tell Ronnie's parents that he was drunk and needed to be picked up. In 1993, they

⁸⁸ See Exhibit 13, Chemical Operations Specialist Diploma.

⁸⁹ See Exhibit 18, Affidavit of Danny Wagner.

accompanied him to Bradford Health Services, a treatment facility in Birmingham, for a week. Although Ronnie tried to get better, he felt that he was unable to stop drinking.

Alcoholism is a persistent disease. “Addiction is characterized as chronic (an addict is never ‘cured’), progressive (the illness always gets worse if ignored), and invariably fatal if left untreated.”⁹⁰ Even with treatment, relapse is common. Research shows that approximately 90% of alcoholics experience at least one relapse in the four years following treatment.⁹¹ “A period of sobriety, no matter how long, confers no protection from the ravages of addiction during relapse.”⁹²

When Ronnie graduated from community college,⁹³ he was still in the throes of his addiction. And the stresses in his personal life were mounting. In 1993, Tracie Taylor, Ronnie’s longtime girlfriend, became pregnant. Given his own abusive childhood, Ronnie worried about what kind of parent he would be. He was also concerned about how he would support the baby financially. To supplement his income from the Army Reserves, Ronnie took on several jobs, including working at the Huntsville Hospital emergency room and multiple convenience stores.

⁹⁰ Myer J. Cohen, et al., *The Lie is Over - We Do Recover*, 73-DEC Fla. B.J. 26, 28 (1999).

⁹¹ See *Alcohol Alert: Relapse and Craving*, National Institute on Alcohol Abuse and Alcoholism, No. 6 PH 277 (October 1989), available at <http://pubs.niaaa.nih.gov/publications/aa06.htm>.

⁹² Robert Coombs, Ph. D., *Addiction’s Defining Nature*, 64 Tex. B.J. 166, 170 (2001).

⁹³ See Exhibit 14, Associates Degree, Calhoun Community College.

Ronnie's son, Jonathan Smith, was born in June 1994. Ronnie was immediately attached to Jonathan, and wanted to do everything for him. While Ronnie was at his happiest, his addiction was at its worst. Ronnie began hanging out with a new group of friends. He went from occasional drinking binges, to nightly binges. His relationship with Tracie, his first serious girlfriend, deteriorated. In August 1994, they broke up.



Figure 12 Ronnie and Jonathan

For the remainder of 1994 until his arrest, Ronnie subsisted in a haze of alcohol. At the time of his crime in early November, Ronnie was drunk, as he was most evenings. He was joined by the new friends he had made, friends who encouraged his drinking and accompanied him down a bad path. Under the influence of alcohol, Ronnie made a terrible mistake for no good reason. That mistake claimed an innocent man's life and cost Ronnie his future. He has regretted it, and tried to atone for it, for more than 20 years.

Remorse and Repentance

When Ron Sr. and Mary learned of Ronnie's arrest for murder, they were shocked and devastated. Neighbors called to tell them that they saw Ronnie's picture on television. Through the ensuing publicity and trial, they had many sleepless nights. They knew that Ronnie's drinking was at the root of all the pain he had caused. He was not in his right mind. The child they knew would not have hurt anyone. Ronnie's parents desperately wished that they had done more to help him.

When the jury convicted Ronnie of murder and voted for life in prison, Ron Sr. and Mary were saddened by the tragic turn his life had taken, but relieved that he would live. Two months later, when the trial judge sentenced him to death instead, Ronnie's parents were shattered. To this day, Mary still has nightmares about Ronnie's trial.

Ronnie and his parents all agree that his arrest has had one unintended benefit: sobriety. Ron Sr. recalls that, in the county jail, Ronnie was more sober and clear-headed than he had been in years. Without the crutch of alcohol, Ronnie had to face the trauma of his past, as well as the damage caused by his own poor choices. He decided that, even from jail, he could live the sort of life Mayor Davis had described years before, one of belief and service. Ronnie used his time well, helping a fellow inmate earn his GED.

After arriving at Holman Prison, Ronnie continued his progress. He has



Figure 13 Ronnie with Parents, Son at Holman

been generous with his time, assisting fellow inmates with writing letters and reviewing legal materials. Ronnie also assisted a correctional officer, Christopher Leggett, with his online college courses.⁹⁴ Leggett recalls that Ronnie was bright, well-mannered, and a hard worker. He

came to consider Ronnie not just an inmate, but a friend.

⁹⁴ See Exhibit 7, Affidavit of Christopher Leggett; Exhibit 8, Letter from Christopher Leggett.

Ronnie's helpful nature assumed an official capacity when he was promoted to hall runner. As a hall runner, Ronnie has worked cleaning up the death row unit, picking up laundry for his fellow inmates, and helping officers with breakfast, lunch, and dinner feedings. As a trusted aide of correctional staff, Ronnie has been permitted to move about freely within the unit, even receiving keys to the mop closets.

Both Mr. Leggett and another retired officer, William James,⁹⁵ have spoken highly of their years working with Ronnie. They never had any problems with him. Ronnie was honest, and always did whatever he could to help. Mr. Leggett and Mr. James both believe that Ronnie can continue to be a force for good at Holman. They support this request for clemency.

Through regular calls and letters from prison, Ronnie has been an emotional support to his family in difficult times. In June 1998, Ron Sr. was



Figure 14 Ron Smith Sr., November 2016

diagnosed with throat cancer. He received chemotherapy to shrink the tumor, followed by surgical removal and 75 radiation treatments. During Ron Sr.'s recovery, Mary worked during the day. Ronnie called from Holman frequently to check up on

him. Ron Sr. believes that the only reason he survived his battle with cancer is so he could travel to Holman to see his son again.

⁹⁵ See Exhibit 9, Declaration of William James.

In 2011, Ronnie's brother, Bryan, died in a tree-trimming accident. Bryan sustained fatal head injuries in a fall. Ron Sr. and Mary are still grieving, but calls and visits with Ronnie have helped them cope with their loss. They also prominently display Bryan's artwork in their home. Given Ron Sr.'s already fragile health, the family does not believe he can survive the death of another child.

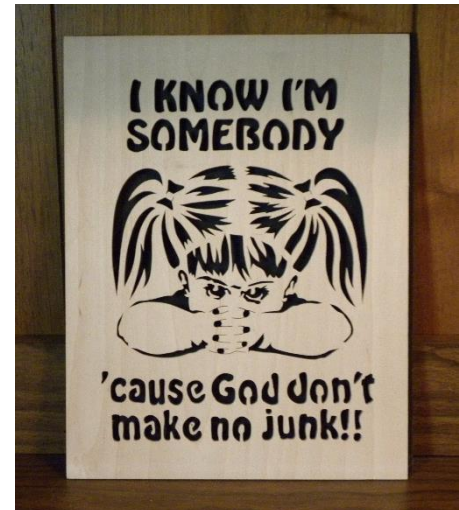


Figure 15 Wood Carving by Bryan Smith

Despite his imprisonment, Ronnie has forged a close and loving relationship with his son, Jonathan.⁹⁶ It pains him to realize that his dependence on alcohol has caused him to miss so much of Jonathan's life. But Ronnie has made the most of the time they have, writing and calling often.⁹⁷ Ron Sr. and



Figure 16 Ronnie with Jonathan, Parents at Holman

Mary have also stepped up to the plate, helping to rear Jonathan and taking him on vacations. When Ronnie's parents visit him at Holman, Jonathan usually comes with them. Through his parents' love and

generosity, Ronnie has been able to watch his son grow from a boy into a man. He always cautions Jonathan not to repeat his mistakes.

⁹⁶ See Exhibit 4, Declaration of Jonathan Smith.

⁹⁷ See Exhibit 5, Cards from Ronnie to Jonathan.

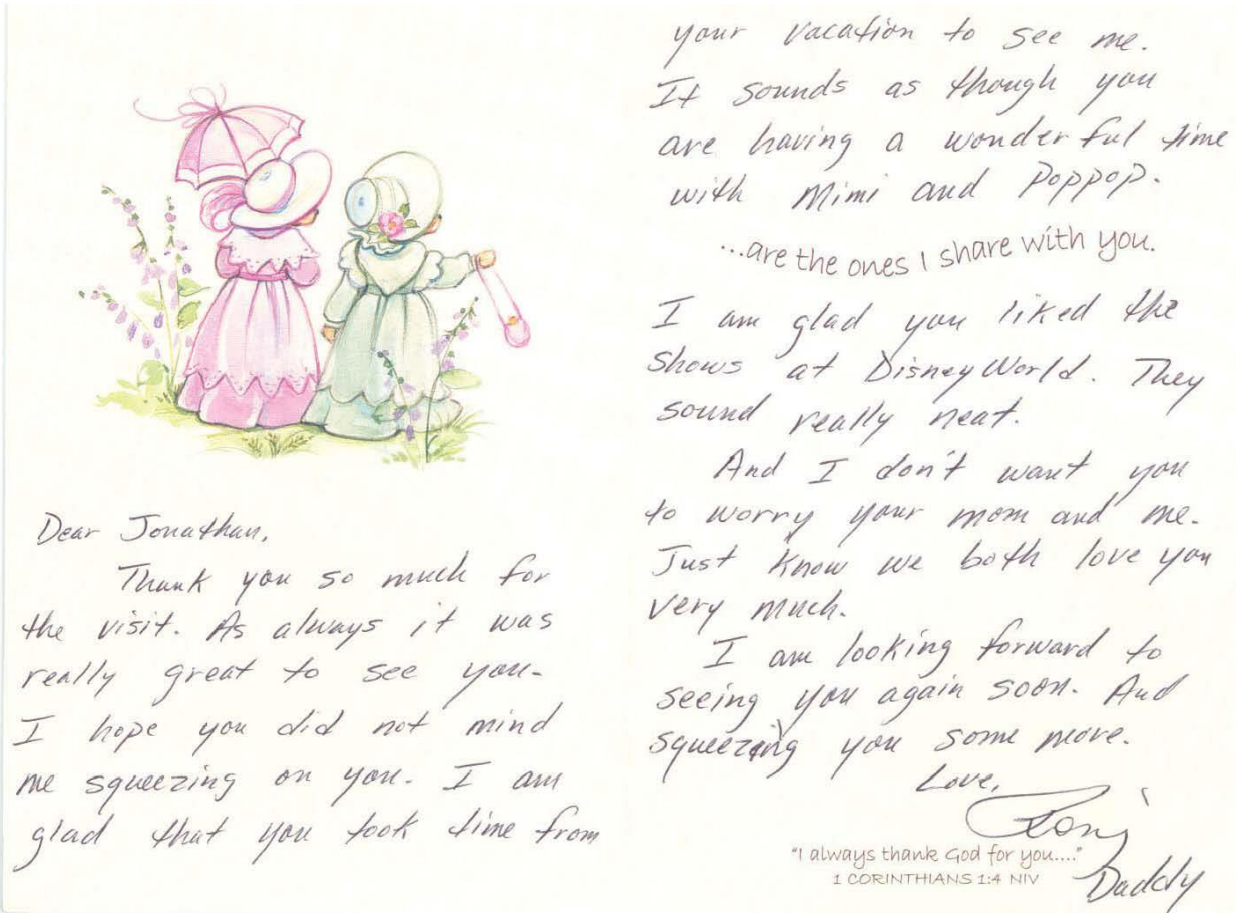


Figure 17 Card from Ronnie to Jonathan

Prison has also allowed Ronnie to reconnect with his religious faith. Rev. William Earl Etheridge, his parents' pastor at Aldersgate United Methodist Church, has exchanged letters with Ronnie and visited him several times.⁹⁸ Upon meeting him, Rev. Etheridge was impressed that Ronnie accepted responsibility for what he has done wrong. Unlike other inmates Rev. Etheridge has counseled, Ronnie does not blame society for his predicament. Rev. Etheridge has talked to Ronnie about his crime, and has been touched by the sincerity of Ronnie's

⁹⁸ See Exhibit 6, Affidavit of Rev. William Earl Etheridge.

remorse. In helping and caring for correctional officers and his fellow inmates, Ronnie has sought to follow the example of Abraham and Moses. As Rev. Etheridge puts it, “Ron chose the path of serving others.”

Ronnie’s renewed faith is reflected in his work with Project Hope to Abolish the Death Penalty, an organization founded and run by Alabama’s death row inmates. Ronnie has held various leadership roles in Project Hope, including vice-president and editor of the newsletter. Ronnie has written a regular column for the newsletter, titled *A Christian Perspective*. In a recent article, “Trusting God? Why Should I?”, Ronnie encouraged his fellow inmates that “[a] blessed by-product of a right relationship with God is an abundant life filled with health promoting hope, the assurance of total forgiveness of sin, and eternal life with Christ.”⁹⁹ In reflecting on the mission of Project Hope, Ronnie has expressed “gratitude that we are not alone in the struggle, that the cause will continue and that we will not be forgotten should our date come up.”¹⁰⁰

Since hitting the rock bottom of his addiction, Ronnie’s life has come full circle. Though he was once hopeless and lost, he now buttresses the hopes of others, and guides them to the light of God’s love and mercy. Ronnie is tremendously sorry for his past mistakes, but he is committed to a better way forward, a path of service and forgiveness.

⁹⁹ Wings of Hope, Vol. 20, Issue 2, p. 5 (April-June 2016), available at http://www.phadp.org/?q=on_wings_of_hope.

¹⁰⁰ Wings of Hope, Vol. 17, Issue 4 (Christmas Ed. 2013), available at <http://www.phadp.org/?q=node/405>.

Conclusion

For more than 20 years, Ronald Smith Jr. has served the sentence chosen by his jury, life in prison. He has done so with a remorseful and repentant heart, endeavoring to make a positive difference in the lives of those closest to him, including his family, correctional officers, and fellow inmates.

Armed with a renewed faith in Christ, Mr. Smith has shown that the abuse in his past, whether child abuse or alcohol abuse, does not define him. Instead, he has striven to be the leader and public servant so many recognized he had the potential to be, even from prison.

In imposing a death sentence in this case, the trial judge disregarded the will of the jury. That was a mistake, and it would be a mistake for that decision to put an end to Mr. Smith's life and the good he is doing at Holman. Out of respect for the jury as the conscience of the community, we ask that you commute Mr. Smith's sentence to life without parole.

Thank you for your time and consideration in this matter. We would appreciate an opportunity to make this presentation in person, so that if there is any additional information that you would find useful, we could quickly provide it.

Sincerely,

Christine A. Freeman, Executive Director
Federal Defenders, Middle District of Alabama
Keisha Stokes-Hough
John Anthony Palombi
Natalie Olmstead
~Counsel for Mr. Smith~

RONALD BERT SMITH,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

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AFFIDAVIT OF VERA ALLEN

1. My name is Vera Allen. I served as one of the jurors for Ronald Smith's murder trial. With the majority of the jurors, I voted for Ronald Smith to receive life without parole for his crime. The trial judge overrode our verdict and imposed death.
2. I have lived in the Huntsville area my entire life. I was born in Madison County on September 24, 1933. I grew up on a farm in what is now the city of Huntsville. For 42 years, I worked for the federal government. As a management analyst, I studied efficiency ideas for managing operations. My husband, Harold, was an engineer at Redstone Arsenal. We have one daughter, a mathematician for the federal government, who resides here in Huntsville. My husband and I are active members of the Church of the Nativity in downtown Huntsville.
3. Serving as a juror was a very emotional experience for me. There were a number of factors I considered in reaching the conclusion that Ronald's life should be spared. I was impressed that he had good parents who tried to provide a good upbringing for Ronald and his adopted siblings. Their next door neighbor had very good things to say about Ronald, who often helped her wheelchair-bound husband. Ronald mowed their lawn for them, and spent long periods of time talking to her husband. I remember that Ronald's father was very broken up by the circumstances. While Ronald's mother was more composed, I felt very sorry for both parents, as they had to face the certainty of never seeing their son free again. I remember that Ronald also had a young son, whose mother came to court.
4. The evidence at trial demonstrated that Ronald was heavily dependent on alcohol at the time

of his crime. There was testimony that Ronald and his friends stayed out all night drinking. They drank at bars until they closed, then went to the riverbank to continue drinking and doing drugs. They then went home in the early hours of the morning, and slept off their liquor until the afternoon.

5. After considering all of the evidence, I decided that Ronald deserved a chance at life. At the time of the crime, substance abuse clouded his judgment. Removed from the influence of alcohol, I believed that Ronald could be a good citizen. With his education and background, he could be helpful to others in prison.
6. The other jurors and I went over the evidence thoroughly, and deliberately reached our decision. I was not pleased when Judge Smith overrode our life verdict and instead imposed a death sentence. At the time, I did not know that the law permitted a judge to dispense with a jury's verdict. If I were younger, I would advocate for a change in the law, as I believe it is very unfair.
7. Ronald's trial was the first time I had ever been a juror in a murder trial. It was very painful to make such a difficult decision, only to have the judge disregard it. I do not want to serve as a juror in a murder trial again, although, at my age, I do not expect to be asked.
8. I believe that many people make mistakes in life, especially under the influence of alcohol and drugs, but they can be rehabilitated. From my observation of Ronald at his trial, I think that he was rehabilitated before he ever set foot in prison. I hope that he ultimately spends his life in prison, as the majority of the jury decided he should.

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Date: 4-24-15

Signed: Kris F. Glenn

Subscribed to and sworn before me, a Notary Public in the State of Alabama,

County of: Madison

Signature: Audra E. Watts

Date my commission expires: 06-22-2017